**THE HON'BLE Ms. JUSTICE G. ROHINI**

**WRIT PETITION NO.23203 OF 2006**

**DATED: 11th DECEMBER, 2006.**

Between :

Hazarat Syed Jalaluddin Sha Quaders Dargha,
Rahamatulla Aliai Charitable Society, Bhoiguda,
Secunderabd, rep. By its President Mohd. Khaja.... Petitioner

And

1. The Union of India, Ministry of Railways,
   Rail Sadan, New Delhi, rep. By its Secretary
   And 2 others. .. Respondents

**THE HON'BLE Ms. JUSTICE G. ROHINI**

**WRIT PETITION NO.23203 OF 2006**

**ORDER :**

The petitioner is a society registered under the Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1350 F (Act 1 of 1350 F) with the object of propagating the ideals and teachings of the Hazrath Syed Jalaluddin Shah Quadri Baba. It is pleaded that a religious structure popularly known as Baba Hazrath Syed Jalaluddin Shah covering an area of 1035.50 sq. yards has been in existence for the past 300 years at New Bhoiguda in Secunderabad.

This writ petition is filed alleging that the Officials of South Central Railway have been taking steps to demolish the said Darga to facilitate further extension of Railway Station Complex towards new Bhoiguda. It is contended that though there is absolutely no need to disturb the Darga, which is a holy place, the officials of 2nd respondent have been highhandedly interfering with the possession of the petitioner society and taking coercive steps to evict the petitioner from the Darga. Hence, this writ petition seeking a declaration that the said action of the respondents is arbitrary and illegal.

A detailed counter-affidavit has been filed on behalf of the respondents by the Additional Divisional Railway Manager and Estate Officer stating that due to extension of railway station and for conversion of the meter gauge to broad gauge it has become necessary to remove the unauthorised occupations. It is also stated that one Darbar Ali Shah employed in the Railways as Steam Loco Driver has unauthorisedly encroached upon the railway land near the

railway platform No.10 of Bhoiguda side of Secunderabad Railway Station and erected unauthorised structures in the guise of Darga. The said Darga was never included in the existing plan forming part of the land records including the survey maps and was never surveyed by the State Government and notified as such by the State Government as a Wakf under the Wakf Act, 1995. Having regard to the religious sentiments of the railway employees of the minority community, though it was considered to lease the premises of Darga to the petitioner, the said proposals could not be materialised. Subsequently, since the said premises is required for developing new station, a notice was issued on 1-9-2006 under Section 4 of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 affording an opportunity of hearing to the petitioner on 30-9-2006. The petitioner failed to avail the said opportunity and consequently an order was passed on 11-10-2006 under Section 5 of the Act directing the petitioner society to vacate the premises within 15 days. Having received the said order, on behalf of the petitioner society Sri Darbar Alisha had negotiated with the officials of 2nd respondent and sought time for further discussions. However, without taking any further steps, he had approached this Court making all false claims.

I have heard the learned Counsel for both the parties in detail.

It is primarily contended by the learned Counsel for the petitioner that the action of the respondents in proposing to disturb the place of worship is arbitrary and illegal. So far as the order of eviction passed under Public Premises (Eviction of Unauthorised Occupants) Act, 1971 it is contended that there was no notice to the petitioner society at any time.

On the other hand, the learned Counsel appearing for the respondents submitted that the Railways had never interfered with the religious activity at the Darga nor there is any proposal to demolish the Darga. However, in the guise of place of worship, the petitioner society has been carrying on commercial activities by misusing the

Railway premises and therefore the order of eviction was rightly passed under the provisions of the Act following due process of law.

The material placed before this Court by the respondents along with their counter shows that the order of eviction was passed by the 3rd respondent under Section 5 (1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short, 'the Act'). The said order was preceded by show-cause notice in Form-A issued under Section 4 (2) of the Act, served on Sri Darbar Ali Sha representing the petitioner society. The material on record shows that the show-cause notice as well as order of eviction were served on Sri Darbar Ali Sha by registered post.

In the circumstances, the plea of the petitioner society that they were not aware of the order of eviction dated 11-10-2006 passed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and no notice was served on them cannot be accepted.

As a matter of fact, the set of material papers filed by the petitioner along with this writ petition also shows that the said Baba Darbar Alishah has been representing the petitioner society describing himself as the General Secretary. As per the documents enclosed to the certificate of registration of the petitioner society, the Managing Committee of the society consists of Sri Darbar Ali Shah as General Secretary and Sri Mohd. Khwaja as President. Though this writ petition has been filed by Sri Mohd. Khwaja representing the petitioner society, it appears that the society in all the proceedings is being represented only through Sri Darbar Ali Shah, the General Secretary of the society. As a matter of fact, Sri Darbar Ali Shah is no other than the father of Mohd. Khwaja who filed this writ petition representing the petitioner society. Hence, I am unable to hold that the order of eviction passed under the provisions of the Act was without notice to the petitioner society. Consequently, the action of the respondents in proposing to take possession of the land in question cannot be held to be arbitrary or illegal.

It is also relevant to note that the respondents in their counter-affidavit made it clear that there was no proposal to interfere with any religious activity at the Darga and only the remaining land outside the premises of Darga, where commercial activity is going on is sought to be removed pursuant to the order of eviction.

The schedule to the order of eviction dated 11-10-2006 passed by the 3rd respondent runs as under :

*SCHEDULE*

*Unauthorised occupation of land by putting AC sheets for use of residential/commercial purpose within the Railway premises of Darga near Platform No.10 of Bhoiguda side Secunderabad to be removed.* ***(LEAVING THE AREA OF DARGA AS IT IS.)***

In the circumstances, the apprehension of the petitioner that the respondents are going to interfere with the place of worship is without any basis. At any rate, in case the petitioner society is aggrieved by the order of eviction dated 11-10-2006, it is always open to them to work out the appropriate remedy of appeal as available under the Act.

Accordingly, granting leave and liberty to the petitioner to work out the remedy of appeal, the Writ Petition is dismissed. No costs.

However, the specific undertaking given by the respondents in their counter-affidavit that there is no proposal to interfere with any religious activity at petitioner's Darga and only the unauthorised occupation in the remaining land is required to be taken possession pursuant to the order of eviction under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 is placed on record and it is made clear that the eviction shall be only in respect of the land covered by the schedule to the order of eviction.

_____

**G. ROHINI, J.**

Dt. 11–12-2006
gbs

Note:- CC in two days.